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AN
ENQUIRY
INTO THE
NATURE and OBLIGATION
OF
Legal Rights :
With Respect to the
Popular Pleas
OF THE
Late K. JAMES's Remaining Right
TO THE
CROWN.

The Second Edition.

LONDON,
Printed by R. ROBERTS. M.DC.XCVI.

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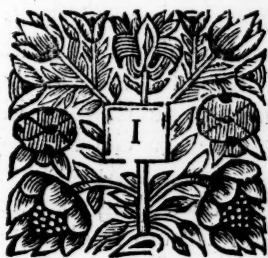
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ENQUIRY
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I T seems to me a needless Task
to prove to Protestants, That
it is more for their Spiritual
and Temporal Interest, to
have a Protestant than a Po-
pish King and Queen; and
therefore I cannot appre-
hend any great Danger to
Their Majesties Government,
from those Scandalous Libels which are writ with
some Art, and dispersed with greater Diligence, to
raise and foment New Discontents. Those are very
sanguine men, who hope to persuade us, That our
Liberties and Properties will be more secure, and
that the Church of *England* will flourish better un-
der

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der the Government of the late King if he return, than under the Government of King *William* and Queen *Mary*. We remember how it lately was, and we feel how it is at present; and if we can trust our Memory and our Senses, all the Wit of man cannot impose upon us in so plain a matter; and therefore I shall take it for granted, That the Argument from Interest ties the Subjects of *England* in the fastest Bonds of Duty and Allegiance to Their present Majesties.

But the Laws of Justice and Righteousness ought to have a greater Authority over Mankind, than all other Temporal Considerations; and at one time or other they will. And therefore while men are persuaded, That how advantageous soever the late Revolution may prove, it is founded in Injustice, no other Argument but Force will for any long time be able to keep the late King out; or to establish Their present Majesties in the Throne. Which shews, That other Arguments are lost labour, till the Dispute of Right and Wrong is better cleared: And tho' there have been many Wise things said about it, it has not yet been stated to a General Satisfaction. The Government of the late King gave great reason to his Subjects to be willing to part with him, whenever he would set them at liberty; and therefore if King *James* hath suffered no Injustice, but what he has done himself; if he hath delivered his Subjects from their Allegiance; and if King *William* and Queen *Mary* are Legally Invested with the Royal Power, and are the Legal King and Queen of *England*, it will be no hard matter to make all men, who love the Peace and Prosperity,

city, their Religion and the Liberties of their Country, to be easy and satisfied, and thankful for such a Change.

And to state this matter plainly, to silence this Pretence of Right and Justice on the late King's side, it will be necessary to enquire, What Right Princes have to their Thrones. This may at first be thought a Dangerous Enquiry, but it will appear to have no hurt in it; and the loud Clamours about *Right*, which disquiet so many mens minds, and disturb the Peace and Settlement of these Kingdoms, and daily threaten us with new Convulsions or Revolutions, make it absolutely necessary at this time to say some few plain Truths, which carry their own Evidence and Conviction with them, which will do no Wrong to Princes, and will do great Right to Subjects.

The whole Resolution of this matter depends upon one single Question, (if so plain a Case may be called a Question) *viz.* Whether Princes have a Natural, or only a Legal Right to their Thrones?

I think I might reasonably enough take it for granted without disputing, That no Prince has any other Right to his Throne, but what the Laws of the Land, or the Laws of Nations give him: For tho some men have disputed warmly for the Natural and Patriarchal Right of Kings, yet they have so few Followers, and the *Hypothesis* it self is so new, and built upon such uncertain Conjectures, and so contrary to plain Matter of Fact, and the universal practice of all Nations, that it is not worth any man's contending about; whoever has a mind to know the mystery of this, may read the

Second Dialogue of the *Bibliotheca Politica*, and try if he can make any thing of it.

For who knows what the Paternal and Patriarchal Authority was? Whether it were a Civil and Political, or only an Oeconomical Authority, such as Parents still have over their Children, or not much more? Who knows how this Authority descended, and what difference there was between the Authority of the Supreme Father, and of the immediate Fathers over their own Children? Whether this by Natural Right does not make the whole World one Monarchy under the Government of the Lineal Heir of the Eldest Family? And how came the World then, contrary to Natural Right, to be canton'd into so many Absolute and Independent Monarchies? Does not this damn all Republicks and Commonwealths as Usurpations upon the Natural Rights of Monarchy? For if the Natural Right of Government be in the Natural Heir, all other Forms of Government besides Monarchy, are contrary to Nature, and an Usurpation upon Natural Right.

But be all this as it will; Where is the Monarch this day in the world, that derives his Pedigree and Lineal Descent from some Ancient Patriarch, who had this Natural Right of Government? Do we not know what the Original of many Monarchies hath been, and what Changes they have suffered? How Pirates and Robbers have advanced themselves to Royal Dignity, and founded New Kingdoms, and begun a Race of New Kings? And were all these the Lineal Heirs of those Kingdoms they subdued? And yet how can they have the
Natural

Natural Patriarchal Right of Government without it? For Natural Rights can never be separated from those Natural Relations which create them.

These are very great absurdities; and yet I must do these men this right, that unless you can find a Paternal Patriarchal Right, there can be no Natural Right to Civil Government; for there is no other Natural Right of Government, but only the Natural Authority of Fathers: (For we are now speaking of the Right to Government, not of the Nature and quality of it:) And therefore, though we should grant that Kings succeed to the Paternal Authority, that they have now the same Authority over their Subjects, that Fathers anciently had over their Children (which I doubt, if truly stated, would satisfy but few Kings); yet it does not hence follow, that they have the same Natural Right to their Thrones, which Fathers have to their Authority. There may be several different Rights to the same kind of Authority; but he who is not in the Paternal Line, nor by Primogeniture inherits the Fathers right, cannot have a Natural Paternal Right.

For as for Natural descent in an Hereditary Monarchy, where the next lineal Heir succeeds to the Crown, whom we commonly style a Natural Prince, and a *Prince born*, who is the Natural Heir to the Crown which is his *Birth-right*; it is plain, this is not a Natural Right, but the Effect of Laws: For if this were the Right of Nature, then Elective Monarchies were a violation of the Rights of Nature; if it be a Natural Right for the next Heir to succeed his Father in the Kingdom, the next Heir of all Kings have the same Right; for the Rights of Nature

Nature are equal and universal; and then it is contrary to Natural Right for any Subjects to own or elect any King but the Natural Heir: There must be in all Kingdoms the same Laws of Succession, which now very much vary; there must be no difference between *Hereditary, Patrimonial and Elective Kingdoms*; For the next Lineal Heir by a *Natural Right* must always be King. It is certain the first King of every Family could have no Natural Right without recurring to an invisible Patriarchal Authority; and if he had none, how could he transmit that Right to his Posterity which he had not himself. But I shall urge this no farther, since the Wisest men, even among the Assertors of K. J's. Authority, pretend to no more than a *Legal Right*.

Let us then in the next place consider the nature of those Legals Rights, especially with respect to the Rights of Princes to their Thrones.

The whole Dispute about Legal Rights (and the Rights of Princes to their Thrones, are no other than Legal Rights) must be resolved into the Laws of the Land; and therefore we must consider the nature, extent, and obligation of National Laws; for pure Legal Rights must of necessity be subject to all the changes, restrictions, limitations, diminutions, that Laws are; and here are so many things to be consider'd, that it is hard to reduce them into method: But it will be most proper to begin with what immediately concerns the Late King's Right. I observe then;

- I. That the Law is satisfied, when that is done which the Law requires to be done; and Subjects are

are no longer bound in Conscience by that Law, when they have answered its demands. Thus the Law of Succession is satisfied, when the next Lineal Heir is placed on the Throne; and when Subjects have done this, they can never more be charged with denying him his Right of Inheritance, when they have actually given it him: This was the case of R. J. though his Protestant Subjects had too just apprehensions of a Popish Prince, yet they set the Crown upon his head with all the usual Solemnities, and own'd and recogniz'd him for their King with all the Formalities of Law. So that the Subjects of *England* never denied, nor do they to this day, *James the Second's* Hereditary Right to the Crown; they own'd and gave him his Right, and he had it, if he would have kept it; and this answered the Law of Succession to the full; but if the King will leave his Throne, and make it *Vacant*, the Law of Succession does not oblige Subjects to give him his Throne again, but to fill the Vacant Throne with the next Heir. The case of *Edward the 4th* and *Charles the 2d*. was very different: They were the undoubted Heirs to the Crown by a Lineal Succession, and were unjustly kept from their Right, and therefore Subjects were bound to do their Right by placing them on the Throne: But the Question is not, and never was, Whether R. J. were the Rightful Heir, but whether he still be the Legal and Rightful King, to whom our Allegiance is due; and his being once the Right Heir, does not prove that he is now the Legal and Rightful King, or that he has any Right to be so again. If he hath a Right but only by Law, I never could find or hear of any Law

Law which gives him any Right to resume what he thought fit once to quit and renounce ; and consequently the Subjects of *England* deny him no Right, in denying to restore him to his Abdicated Throne : and then the Dispute of Right and Justice is out of doors as to this matter, as far as the Right of Succession is concerned.

2dly. All Legal Rights are subject to some Legal Judgment, or definitive Declaration, and must be determined by it ; and such a Judgment is the rule and resolution of Conscience, as to such adjudged Cases. For we have no other rule in matters of Law, but a Legal Judgment, or Sentence, and our Obedience to Government requires us to acquiesce in such a Judgment, as is pronounced by a legal and competent Authority : So that *to govern and to judge must belong to the same Authority* ; as far as I am bound to obey any man, I must follow his Judgment and not my own ; especially when this judgment is pronounced by the last Judicature, from whence lies no appeal. Let us then apply this to our present case.

The late King withdrew his Person and Authority, and left us without any provision for, or face of Government : The Estates of the Realm Assemble upon this great occasion ; adjudge this to be an *Abdication* and *Desertion* of the Government, and declare the Throne *Vacant*, and fill it with their Present Majesties : And the Question now is, Whether this be not such a Legal and Decisive Judgment as all the Subjects of *England* ought to acquiesce in ? If the Disputes about Legal Rights must be decided by Law, not by the Sword, (which is not the decision

cision of Civil Authority, but of Force), the sentence of competent Judges must end the Dispute; and if the Estates of the Realm be not the proper and legal Judges of such Disputes as concern the Right to the Crown, there can be none; and if they be, Subjects must acquiesce in their Judgment, or it is all one as if there had been none; for if men may pretend Conscience, and adhere to their own private Opinions, in contradiction to the definitive Sentence of the last and sole Judges, the Dispute must end in Blows, which is contrary to the Reason and Nature of humane Societies, which were instituted to prevent Wars, and to end all Controversies by a legal Judgment without the Sword.

I deny not but there may be great Injustice done by Corrupt, or Ignorant Judges; and the Law has made the best provision it can against this, by allowing appeals from Inferior to Superior Courts: But if the highest Authority, from whence lies no Appeal, happens to judge wrong, there is no remedy but to bear it patiently. We are not bound indeed to think that right, which we know to be wrong; but we are bound to acquiesce in it to all the intents and purposes of Law, as much as if we did believe it right. And as hard as this may sometimes prove, there is the same necessity for this, that there is for Laws and Civil Authority; all Legal Rights are held by this tenure, to be subject to a Legal judgment and determination, and though some men may suffer by a wrong judgment, it is much better to oblige them to acquiesce under it, than by leaving them a right to dispute it, to endanger the bringing the whole into a state of Anarchy and War. Civil Authority will compel private

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men to submit to its decisions, whether they think them right or wrong; and in all cases where men are bound to submit to Authority, they are bound to submit to the publick Judgment. So that whatever Right some men may think K. 7. has, it is not a Right in Law, because by Law it is determined against him; or whatever Right in Law he may still be thought to have, it is not such a Right as can affect the Consciences of Subjects; for the last definitive Sentence is the concluding judgment of the Law, and the rule of our Actions, as far as Law is our Rule. Whether this judgment is thought right or wrong by private men, the late K. has no remedy by Law, for the Sword is not Law; and though Subjects are bound by their Oaths of Allegiance to defend their King, his Crown and Dignity, against unjust force and violence, they are not bound to Restore him against Law; for I desire any man to tell me by what Law Subjects are bound to oppose Force in any case against the last and final determinations of Law. For Force opposed to Law, as far as it reaches, is a dissolution of Civil Government. It is absurd to think that any Civil Constitution should allow an appeal to the Sword, against the judgment and sentence of the last Authority; and therefore when the Controversy is brought to the last appeal, this is all the Law can do, and those who will be governed by Laws must acquiesce in it; and those who will go farther must not pretend to Laws, and Legal Rights. Nor is this to set up an Authority Superior to Kings, which when the King is on the Throne in actual Ad-

and Obligation of Legal Rights, &c.

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Administration of the Government, is a contradiction to the notion of a Sovereign Authority; but it only makes the Estates the sole Judges of all Disputes concerning the Crown, when there is no Monarch actually in the Throne: thus they always have been in *England*, and thus of necessity they must be, if such matters as these are subject to the declaration and definitive sentence of a Legal Authority: And this can never prove dangerous to Kings while they keep their Thrones.

3^{dly}. A Legal Investiture and Possession is a good Right in Law against all other titles and claims, till it be condemned and reversed. This is so notoriously known, that it needs not be proved: The most unjust Possessor must not be dispossessed by force under a Civil Government, till the wrong do some way appear before a proper Court, or the Law has given judgment against him; much less when a man has gotten possession by a Legal sentence, though upon false suggestions, and by an erroneous judgment of the Court. Such a Legal Possession gives as great Authority to all his Acts, till the Sentence is reversed, as it would do to the Acts of the most Rightful Possessor: Tenants, though they are satisfied he has no Right, must Pay their Rent to him, and may do it without any scruple of Conscience, because the Law has given it him, which is their Rule: And are obliged, and may be compelled, to do all Duties and Services, as to the most Rightful Landlord.

And thus it is in places of Trust and Civil Authority. The Legal Return of a Member for Parliament, whatever dispute there may be about the

truth of his Election, gives the Person so returned, a Right to sit in the House of Commons, and his Vote is as good as any Members there, till his Election be pronounced Void. Thus whatever dispute there may be about a *Mayor*, an *Alderman*, a *Sheriff*, a *Chamberlain*, of any City, or Corporation, (as we know it lately happened in *London*); he, who is invested with the customary Solemnities in the Office, is for the time the Legal Mayor, or Alderman, and all his A&ts are Valid and Legal, till it be adjudged against him; and all Citizens, even those who think him not rightly Elected, are bound to pay him all that Duty which belongs to his Place and Office. And there is great and necessary reason for this to prevent the interruptions of Government, which are a greater mischief to any Society, than to be Governed by one, who has not a rightful claim to Government. And this reason holds much stronger, as to the Supreme and Regal Power: for if a King who is Legally invested with the Royal Authority, who is placed upon the Throne by the Estates of the Realm with all the accustomed Rites and Ceremonies of Law, must not be owned and obeyed as the Legal King, when there is no other visible Authority, the Government is at an end, as far as such men can put an end to it; especially when there is no appeal from that Authority which placed him on the Throne, but only to the Sword. Such a Legal Investiture by the Supreme Authority of the Nation, is a Legal Determination of his Right, That whatever other Claims and Titles there may be, they judge his the best; which must be final to Subjects,

jects, who will be governed by Laws; and those who will not submit to it, must talk no more of Laws, for the Law is against them, even the Fundamental Law of all Civil Societies, to be determined by the last and highest Authority, from whence lies no Appeal.

He then is the Legal King, who is placed on the Throne by a Legal Authority; and all Legal Obedience and Allegiance is due to him. The Law of *England* knows no other Legal King but him: My Lord Chief Justice *Cooke*, and other great Lawyers agree, That the Statute of Treason, 25 *Edw.* 3. relates only to a King thus Legally possessed of the Throne; and indeed it cannot be thought it should mean any other, since there was no other Notion of a King, when that Statute was made, but he who was Actually and Legally possessed of the Crown; for the distinction between a King *de jure* and a King *de facto*, was not heard of till *Edw.* 4. tho there had been many Kings before that time, who ascended the Throne without the Title of a Lineal Succession; and it was a great deal too soon to broach such a Distinction then, unless they had a mind to allow private Subjects to judge of Princes Titles, against the Publick and National Judgment, and against the Authority of National Acts: Whereas Legal Titles in all other Cases are not regarded in Law, till they are Legally declared; and with much more reason ought to be so, when the Title is of so high a nature, as a Challenge of the Crown.

Before this time, all Kings who were advanc'd to the Throne with the general Submission of the People, were esteem'd equally Legal and Rightful Kings,

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as to all the effects of Law : And we may observe in all our Histories, That no King who was ever Crowned by the People, was ever wholly deserted or deposed for want of Title. The Disputes of *William* the 2d. and *Henry* the 1st. with their Elder Brother *Robert*, were accommodated between them by some Great Men : So was the Dispute between King *Stephen* and *Henry* the 2d. which was ratified by the Parliament at *Winchester* : Nay, so was the Dispute between *H. 6.* and the Duke of *Tork*, who challeng'd the Crown in Parliament ; but how clear soever the Duke's Title was, the Lords would not allow, that the King should be divested of his Royal Dignity, but that he should keep it for his life : And after this Distinction was started, they found it of such mischievous Consequence to the Subject, whenever the Right to the Crown was disputed by the Sword, that in the Reign of *H. 7.* there was express provision made against it by Act of Parliament, declaring the Allegiance of the Subject to be due to the King for the time being, that is, to the King who was possessed of the Throne by the publick Judgment and Act of the State ; and that no Subject should suffer for serving such a King in his Wars, according to their Duty of Allegiance, neither at Home or Abroad.

This gives a plain Answer to the Book entituled, *The Case of Allegiance to a King in Possession* : That Author thinks it a Demonstration against my Lord Chief Justice *Cooke*, That the Statute of Treason cannot mean a King in Possession without a Legal Title, because it is unreasonable to think, that the Law should mean any King, but one who is King by Law ; which is most certainly true ; but then it is not merely a Legal

gal Title, but a Legal Investiture and Recognition, that makes a Legal King, or a King in Law, as it makes a Legal Magistrate: And then all Kings *de facto*, who are placed in the Throne by a Legal Authority, and with all Legal and accustomed Ceremonies, are not only Legal Kings, but the only Kings that the Law allows to be Kings.

His other Argument is against the Authority of the Laws, supposing they did allow any such thing; for he says it would be a wicked and unjust Law to establish a Prince in the Throne, who has no Right to it; and to justify Subjects in fighting for such a King, tho it should happen to be against their Right and Lawful Sovereign: Which is a very absurd Argument, if Princes have no Natural, but only a Legal Right to their Thrones; for all Legal Rights must be subject to a Legal Judgment; and a Legal Possession is a Right in Law, against all Force: For the Civil Sword is always on the side of him that is in Possession under a Legal Determination, whatever his Title be: And certainly there is as much reason the Sword should defend the Legal Possessor of the Throne, as the Legal Possessor of Lands and Houses: And I would ask this Author, supposing he were Sheriff of a County, whether he would make any scruple of Conscience, to defend him who was possess'd of an Estate under a Legal Recovery or Process, against a violent Intruder, tho he knew or did verily believe him to be the right Heir? Or whether Inferior Magistrates, who are to execute the Sentence of Superior Courts, are bound in Conscience to execute no Sentence, but what they themselves believe to be just? If this be admitted, Civil Authority is at an end,

end, and all the Courts in *Westminster-Hall* are of little use: And yet if it be lawful, nay, if it be absolutely necessary in Civil Societies, in such cases as these to defend a Legal Possession against a presumed Right, then the Law may very justly require us to defend a King, as well as Subjects, in his Legal Possession, against all other Rights and Claims; and if the Laws are the measures of Civil Obedience, Subjects may very justly and with a very good Conscience do it. Which justifies what some have asserted, That such Legal Rights as these are not concern'd in the dispute of Allegiance against a Legal Possessor of the Throne; for a Legal Possession and Investiture is the only Legal *Thorough Settlement* of the Government; and this shows how much this Author is mistaken, when with reference to this Controversy he disputes so warmly, that God himself cannot make it lawful for us to oppose Right, no more than he can make Right to be wrong; which is true with respect to pure Natural or Moral Rights, but does not hold in meer Legal Rights, which are as to any effects of Law esteemed of no value against a Possession, till they are judicially declared: And 'tis not the proper business of any private Subject to judge concerning them.

But the truth is, this Author looks upon the Rights of Kings not to be mere Legal Rights (which are Rights no longer, and in no other manner, than the Law allows them to be Rights), but such Natural Unchangeable Rights as Parents have to the Government of their Children, nay, as God himself has to the Government of the World. For he thinks men may as well worship *gods de facto*, (such as the *Pagan* Deities were, when they had got Possession of the
Temples

Temples and Altars), as pay their Allegiance to a King *de facto*, when he is possess'd of the Throne ; which is not more Prophane than Weak ; unless he thinks that the Law can make a God, as it can make a King ; or that Kings are as much by Nature Kings, as God is God. This, by the way, is a short but full Confutation of those two large Pamphlets, *The Case of Allegiance to a King in Possession* ; and, *The Defence of the Case*. For all that the Author says to any purpose, is resolved into one of these two Principles, That the Law owns no King, but him who has the Legal Title ; and, That Kings have a Right to their Crowns superior to Laws, and which obliges Subjects against a Legal Judgment, and a Legal Possession ; if these Principles fail him, all the rest must fall to the Ground ; And whether these be true or false, I appeal to what has been already said.

4thly. As a necessary Consequence and Justification of this, I observe, That a Legal Title to the Crown, and a Legal Authority to administer the Government, may be separated : That he who has the Title, may not have the Legal Authority, nor be the Legal King ; and he may be the Legal King, and have the Legal Authority, who has not an Antecedent Title. This is past all Controversy, if what I have already said be true, That a Legal Investiture and Possession is a good Right in Law against all other Titles and Claims.

It may possibly appear a Mystery to some men, how there should be two such contrary

Legal Rights; A Legal Right and Title to the Crown, without a Right to exercise the Authority belonging to the Crown; And a Legal Right to wear the Crown, and exercise the Authority belonging to it, without an Antecedent Legal Right to the Crown it self; but whoever considers that allowed distinction between *jus ad rem*, and *jus in re*, with the reason of it, will easily understand this matter. It is an approved Distinction in Law, That one man may have a Right to a thing, and another a Right in it; the one is a Right of a Legal Claim, the other of a Legal Possession: And that this may and must be in all Civil Governments and mere Legal Rights, appears from the different Laws and Customs on which such different Rights are founded: This I have hinted at before, but must now explain it more particularly.

In all Civil Societies there must be particular Laws to determine mens personal and particular Rights; and whatever is due to any man by such Laws, is his Legal Right. But yet we know these Laws can determine no Controversy without a living Judge; for if every man were to judge for himself, every man will make the Law to be on his side, and then we had as good have no Laws at all; and therefore the Fundamental Law of all Societies, which is superior to all particular Laws, is this, That the last and final Judgment of Authority shall be esteemed the Law, and that shall be every man's Right as to all the effects of Law, which is thus adjudged him.

him. Whoever calmly considers things, will find that it is impossible it should be otherwise, without overturning all Civil Governments.

Suppose then that the true Heir to an Estate should be dispossessed of it by an Erroneous or Corrupt Judgment at Law; and another by the same Judgment should by all Legal Methods used in such Cases, be possess'd of it, though he be not the true Heir; here now is *ius ad rem*, and *ius in re*: The true Heir by the Laws of Inheritance has the Legal Right to the Estate; but by the Supreme Law of all Societies, which refers the decision of all personal Rights to a Legal Authority, he who by a Legal Judgment is possess'd of it, has the Legal Right in the Estate, against all Claims; and Legal Authority must defend him in it; and all who will submit to Laws and Legal Authority, must acquiesce in it.

And thus it must be with respect to the Rights of Princes, as well as of Subjects. The Right to the Crown is often disputed, as we all know; and to say that when such Disputes happen, there is no Authority in the Nation to decide them, is to say that Princes have no Rights to their Crowns by the Laws of that Nation; for there can be no Civil Laws, of which there are and can be no Civil Judges; for no man, no not a Prince, can be Judge in his own Cause; and if Princes have no Legal Rights, they can lose no Legal Rights when they lose their Crowns; and I doubt their Natural Rights will affect the Consciences of very few Subjects.

A Supreme Independent Society must, from the Nature of such Societies, and the Reason of their Institution, have Authority within it self to decide all Controversies which may arise about the Rights of every part or Member of the Society, and to preserve it self from falling into a State of War, which is a Dissolution of Civil Government; and if there be such an Authority in every Nation, when the Supreme Authority has determined such Disputes, it must determine Subjects; and no Right, or pretence of Right, can affect the Conscience after such a final Judgment; unless Civil Rights can oblige Subjects to dissolve Civil Governments, and to dispute Legal Rights, not by the Law, but by the Sword; which is to overthrow all Civil Rights, and to put an end to the Authority of Laws.

This shows how much those men are mistaken, who think there can be no King in an Hereditary Monarchy, but the next Lineal Heir; and that no Allegiance being due or to be paid to him who is no King, none can therefore be due to any Prince, however possessed of the Throne, if he be not the next Heir. That no Obedience is due to him who is no King, I readily grant, though it may in some cases be paid to him who is no King; but he may be a Legal King who is not the next Rightful Heir, as almost half of the Kings of *England* since the Conquest were not, and yet have been always own'd and obey'd as Legal Kings.

But

But the ground of the mistake is, that they do not distinguish between Natural and Legal Relations; but think a King to be a King by as certain and unchangeable a Right, as a Father is a Father; as if Laws were of the same force and power with Nature; as if to be Heir to a King, which in Hereditary Monarchies gives a Legal Title to Succession, did as necessarily and unavoidably make a King, as Natural Generation makes a Father. These men do not consider, that in Natural Relations the Right makes the Relation, and enters its definition; and therefore the Right and the Relation can never be separated: The Right to be a Father is to beget, and the definition of a Father is he who begets; and therefore no man can be a Natural Father, but he who begets; and every one who begets, is a Father. But now in Legal Relations, an Antecedent Right does not make the Relation, nor is any part of its definition: *The Right* to be a King is one thing, and *to be a King* is another; the Rights may be very different, but the Notion of a King is the same: The Rights may be Hereditary, Patrimonial, Testamentary, by Election, or by Conquest; but the Notion of a King is one who Administers the Civil Government with a Sovereign Authority; whoever does so, is a King, whatever his Title may be; as he that begets is a Father, though it be by Unlawful Embraces. The answer to that question, *Who is King?* is not, *He who has the Right to the Crown*, but *he who is invested with the Regal and Sovereign Authority*.

Authority. But if we enquire how he came to ascend the Throne? Whether he be an Hereditary or Elective King, a King *de facto*, or an Usurper? These questions must be answered by the Claim or Title by which he holds: That he was the Right Lineal Heir of the last King, or that he was Elected by the people; or that there being some dispute about the Crown, it was adjudged to him by the Estates of the Realm; or that he won it by his Sword, and either keeps it still by Power, or now wears it by the Consent and Submission of the people. An Antecedent Right cannot belong to the definition of the King, for then there could be no Kings but Hereditary or Testamentary Monarchs; and as for any other Right, he has it who is invested in the Regal Authority by those who are the Supreme Power of the Kingdom, and represent the body of the people, when there is no Monarch, nor provision for administration of Government. Whoever is invested with the true Regal Authority, is a True and Right King; for he to whom the true definition of a King belongs, is a true King. An Usurper, who Governs by mere Power, and by the forced Submission of the people, has the Power, but not the Authority of a King. But he who is set'd in the Throne by the free decision and declaration of the Supreme Authority of the Kingdom, has the Authority as well as the Power of a King; and therefore is a True King, whether any private Subject think he had any Antecedent Right or not.

So that it is a groundless pretence, That in an Hereditary Monarchy he is no King, how Solemnly soever invested with the Royal Authority by the Estates of the Realm, who does not Ascend the Throne by a Lineal Succession; for he is a King, who has the Authority of a King; and he has the Authority of a King, who is invested with the Regal Authority by the Estates of the Realm; for there is no other human way of conveying the Regal Authority; and then the Reason and Nature of things is so far from forbidding, that it requires us to pay our Allegiance to him, who is Legally invested with the Regal Authority and Power.

But yet this is not the question, Whether in an Hereditary Monarchy the next Heir ought to be owned and Recognized for King? But, Whether Subjects may not with a good Conscience obey him as the Legal Rightful King, to whom (when the Right to the Crown is disputed) the Estates of the Realm adjudge the Crown? For all mere Legal Rights (when any controversies happen about them) must be declared by the judgment of a Legal and Competent Authority; and Subjects have no Legal cognizance of any Legal Rights, but by a Legal sentence and judgment. Their private Opinions and Judgments, in such cases as do not concern Natural but Legal Rights, are not the Rule of Conscience (for that would overthrow all Civil Authority) but the publick judgment; and therefore he must be owned and obeyed as King, whom the Highest Authority of the Nation places

places on the Throne, whatever our private Opinion may be about the Right of Succession.

Whoever will not allow of this, could not in Conscience have paid their Allegiance to almost half the Kings that have been in *England*, since *William* the Conqueror. *W. Rufus* and *H. 1.* were not Lineal Heirs, for their Elder Brother *Robert* was still living; King *Stephen* and King *J. 1st* were Kings without an Hereditary Title; *Edward* the 3^d. was Crowned upon the Deposition and forc'd Resignation of his Father; the three *Henries*, 4, 5, 6. were of the *Lancaster* Line, which was the Younger House, and excluded the Rightful Heirs of the House of *Tork*; and *H. 7.* had no Personal Right of Succession to the Crown, but yet he had the Crown before he married the Heiress of *Tork*, and took the Administration of the Regal Power to himself, though the Authority was hers, and kept the Crown after her death, though the Right was in his Son; which were as manifest Violations of the Right of Succession as the Three *Henries* had been guilty of: So that there have been Eight Kings since the Conquest out of the Line of Succession, and generally known to be so, besides the Conqueror himself, who could pretend no Lineal Succession to the Crown; and these Kings Reigns put together, amount unto near Two hundred years: And what should the Subjects of *England* have done all this while, if the Lineal Succession had been so Sacred, that they were bound in Conscience to own no
King

King but the Lineal Heir? How should the Norman Line ever have begun, who were not the Lineal Heirs? and how came the Lineal Succession in the Norman Line to be so sacred, which it self began without it, and had no Lineal Succession for the first four Reigns?

But I must not dismiss this Argument without examining a late Author, who Disputes very vehemently, *That Authority must go by Rightful Titles*: He says a great deal about it, but a short answer will serve when once the case is plainly stated: He defines *Civil Authority to be a Right or Liberty in one to order or do a thing in Civil matters, laying an obligation on others to follow, or submit to him*. Though this be a lame and equivocal definition, yet I shall not dispute with him about it, if he will add the word *Legal*, that *Civil Authority is a Legal Right or Liberty*, &c. I agree with him that Authority is very different from external Force; and I have reason to grant to him (for he ruins his own cause by it) that God makes no Kings, but those who are made Kings by some human Acts, and have a Human and Legal Right to Kingship. But now how does he prove from hence, that in *England* (suppose) none can have a Legal Right to Govern, but those who have this rightful Title of a Lineal Succession? For if the Title is not the Authority, but a Legal Investiture gives a Legal Authority, it is possible that a Legal Title, and a Legal Authority, may be separated, and the Authority continue Legal still. Legal Authority

The Duty of Allegiance settled on its true grounds.

rity must be conveyed in such manner, and by such forms as the Law has prescribed, or appoints to that purpose, for there is no other way of conveying it; and then that Authority which is given in form of Law, and that only, is a Legal Authority: If then the Estates of the Realm, who are the only Judges of such disputes, adjudge and give the Crown to one, whom we suppose not to have an antecedent Legal Title to it, yet he becomes Legally possessed not only of the external Force and Power, but of the Legal Authority of Government. And therefore he may challenge as his due, *all Legal Obedience* (which must be the true Notion of *Allegiance*, for nothing more than *Legal Obedience* can be due to a mere *Legal Authority*) because he is invested with the Legal Authority; the *Regal state* is his *Legal Property* against all other claims, and his Subjects must defend him in it; as the Legal Properties of private persons are determined by judgments of inferior Courts of Law; and if God makes Kings by human Acts, I hope it is no injustice in God to make him a King, whom the Law makes a King, and to enjoin our Obedience to a Legal King; and therefore whatever he can make of the Fifth Commandment, the *Legal King* is our *Politick Father*; and therefore entitled to that honour which is there commanded, if that concerns Princes, which I need not now dispute. Legal Authority may be said to be annexed to the legal Title, while there is no Legal Judgment against it, which was the case of

of Queen *Mary*, and *C. 1.* and *2.* But when one is solemnly declared King, and placed in the Throne by the Estates of the Realm, he is the legal King and has the legal Authority, as the Royal Estate and Dignity was owned to be in *H. 6.* when the Duke of *Tork* disputed the Right to the Crown; and thus it must be in all legal Rights, as I have already proved; and this strikes at the foundation of all this Author's arguments; and therefore I need follow him no farther.

5thly. There is another difference between Legal and Natural Rights, not only that Legal Titles, and Legal Authority, may be parted from each other; but that Legal Titles and Legal Authority may be rightfully separated from the Persons, to whom they were once due, which Natural Rights can never be: A King may cease to be a King, though a Father can never cease to be a Father; for Laws have not the same force and power that Nature has. All men confess this may be done by a voluntary Resignation, which divests such a Prince of all Right and Authority to Govern; and if it may be done any way, his Right and Authority is not inseparable from his Person: Our Adversaries indeed will not allow that a King can lose his Right, unless he voluntarily part with it himself; and therefore that no man can be King, while a former King is living, and that God himself cannot advance a King to the Throne, while any one is living who ever had a Right to that Throne, and never resigned

his Right ; because it is contrary to Justice to give away the Throne from a Prince, who has the Right to it ; as if God had not an Original Right to all the Kingdoms of the World, but was confin'd to Human Rights and Claims in making or unmaking Kings : But if a King can part with his Kingship, it is possible he may lose it too ; for there are usually more ways than one, of parting with that which may be parted with : And besides what is granted, *viz. A Voluntary Resignation*, I shall consider two other, *Conquest* and *Abdication*.

1. *Conquest* ; Which I do not mention as if I thought this to be our Case, that we are a *Conquer'd People*, and that King *William* ascends the Throne by *Conquest* : For whatever may be said of the *Conquest* of King *James* (who was either forc'd out of his Kingdoms, or left them voluntarily ; if the first, he was *Conquer'd* ; if the second, he *Abdicated* in the most proper Sense, and I know no medium between them). Yet the People of *England* are not *Conquer'd*, nor did the King ever pretend any such Right to the Throne. But let this be as it will, all I intend at present, is to convince these Men, That the Crown may be lost by *Conquest*, which may extinguish old Rights, and begin a new one, and deliver Subjects from their Allegiance to a *Conquer'd Prince*.

That *de facto* Kings do lose their Crowns by *Conquest* ; that many great Revolutions of States and Kingdoms are owing to this Cause ; and that

no

no Nation ever made a scruple of Conscience about submitting to a Conqueror, is plain beyond denial; but the question is, *quo jure*? How a Conqueror can gain a Right to a Throne, which another Prince has a Legal Right to? And how Subjects, tho Conquered, can transfer their Allegiance from the Rightful Prince to the Conqueror, who has no other Right but his Sword? And I shall distinctly consider this with respect to Princes, and with respect to Subjects.

Now the general Answer to both, is this, That Legal Rights can reach no farther than the Laws of the Land, nor oblige any persons whom they do not oblige, nor oblige any longer than the Laws oblige: These are self-evident Propositions, and need no proof; for Rights which are founded only on Laws, can reach no farther, nor last any longer than the Laws do.

1. In the first place then, with reference to Princes, no Legal Right that any Prince has to his Throne, can debar another Foreign Independent Prince in case of a just Quarrel, to subdue and conquer, and take his Crown. The reason is, because the Laws of the Land, which give a Prince his Crown, do not oblige Foreign Princes, but only Subjects. The Laws of particular Countries are Laws only to themselves; but there is no Law between Sovereign Princes, but the Laws of Natural Justice, and the Law of Nations. The Rights of Princes, with respect to each other, are only Possession, which is the only Right men can have to any thing in a state

state of Nature, before the forming of Civil Societies, and with them Legal Properties; and for the same reasons that any man in a state of Nature might justly be turned out of his Possession, a Prince may still with equal Justice be turned out of his Kingdom by another Prince; and the Prince who conquers in a just War, may seize the Throne of the conquered Prince; and if he be placed there by the Consent and Submission of the people, is no Usurper upon either Prince or People, but a Rightful Prince, who begins a new Legal Title. How indefeasible soever a Prince's Right be by the Laws of the Land, that is no rule to Foreign Princes, so they do not violate the Laws of Nations, nor the natural Rules of Justice in seizing his Throne; and whenever the Crown may be justly taken, it is justly lost, and there needs neither the Death nor the Resignation of the Legal King, to give a just Title to the Conqueror. Possibly there have seldom been any such just Wars, or just Conquests; but it is enough to my purpose, if such there may be; and I think no man doubts, but that there may be just Causes of War; and a just War will make the Conquest just.

If any Prince or State be injurious to their Neighbours, the injured Prince may demand Satisfaction; and if it be denied, may take it himself, as every private man may do in a state of Nature, when there is no superior to judge between them; which brings such a Dispute to the Decision of the Sword, which is the only redress of Injuries, when there is no Civil Authority

thority to judge between them ; and yet it were to no purpose to fight , if it were unlawful to conquer, and not only to do himself right , but prevent future wrongs from the injurious Prince.

For a Prince to invade the Dominions of another Prince, or to assist such an aspiring Monarch to enslave his Neighbours, is a just Cause for the injured Princes and their Confederates to oppose Force to Force ; to fight and conquer if they can, and take the Crowns of such injurious Princes.

Nay, it has been always accounted not barely a just Cause of War, but an Heroical Act, to subdue Tyrants, and rescue their oppressed Subjects, who either cannot or must not defend themselves. To vindicate the injured and oppressed, is what all mankind not only allow but applaud ; private men may do this against private Oppressors, by a course of Law where they are under Laws, or by private Force where they are not: Princes who have the Power of the Sword, may repress Violence and Injustice wherever they see it ; for though they have no superior Authority over each others persons, nor Jurisdiction in each others Kingdoms, yet being under no Authority neither, nor any Laws which forbid their redressing Injuries, and relieving the oppressed, it is so far from being a fault, that it is great and generous to do it. Every man in a state of Nature, where there are no Civil Laws nor Government, has Authority enough to right those who suffer against natural Right. But this Liberty is restrained for the
advan-

advantage of Human Societies, and the administration of Justice is put into the hands of the Prince and his Ministers. But Princes themselves are under none of these Restraints, and therefore may not only administer Justice to their own Subjects, but may repress the Violences and Injuries of other Princes, not only against their Neighbour Princes, but against those who are subject to them, and cannot help themselves. They have certainly as much Authority to relieve oppressed Subjects, as an oppressed Prince ; and no man thinks it ill for one Prince to assist another against a Powerful Oppressor : And I do not know it was ever thought a fault yet, to relieve Subjects against an oppressing Prince, where the Oppression was notorious, and not made a mere pretence for Usurpation. I would desire any man to give me a tolerable Reason, why it was not as lawful for the Prince of *Orange* (had there been no other reason for it) to rescue and defend the Subjects of *England*, against the illegal Power and Oppressions of their King, as it is for the *French* King (some mens Pattern of Honour and Bravery) to endeavour by force of Arms to restore the Late *King James* to his Throne again?

And if Religion be concern'd in the Quarrel, it is never the worse for that, but the more reasonable and just: For why should not Princes be concern'd for the Glory of God, from whom they receive their Authority, and vindicate his Worshippers from the Persecutions of Cruel Tyrants? Subjects indeed must not rebel; Christianity must not be forced upon Men by Fire and Sword;

Sword; but must it not be defended neither by Christian Princes? When God has put the Sword into their hands, must they stand by and see the Worshipers of Christ persecuted, and not help them when they can? I am sure God delivered the Christian Church from the most bloody Persecution that ever was, by the Arms of *Constantine*, and made the Cross his Banner. And this was none of the least Causes of his War with *Licinius*, That he persecuted the Christians. When *Constantius* the *Arian* Emperor persecuted *Athanasius* and the Orthodox Bishops and Christians, *Constantine* advised him of it, and threatened War against him if he persisted in it; and it does not appear, that the Christians of those days, who fled to *Constantine* for refuge, thought he would have done ill in it; and yet their Dominions and Authority were as distinct and absolute, as *France* and the *Grand Signior*, though the most Christian King follows other measures.

Now I know not how to think that men are serious, when they will not allow an oppressed people, delivered by such a Generous and Charitable Prince, to own their Deliverer, and pay Duty and Allegiance to him? I think slaves have so much liberty as to own the Conqueror; and if he deliver them, and set them at liberty, and make Subjects of them instead of slaves, to be his Liege-men for ever. But some mens Notions make them greater Slaves to Princes than ever the world knew before.

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Foreign Princes are not obliged by the Laws of the Land, yet Subjects are, and therefore are still bound to pay their Allegiance to that Prince, whom the Laws of the Land make their Prince.

How difficult soever it may be to assign the Reasons of this, it is certain it must be so, if a Prince may lose his Crown by a just Conquest; for if a Prince justly lose his Crown, he must lose the Allegiance of his Subjects, which must follow the Crown; and it is impossible one Prince should lose his Crown, and another win it, were it unlawful for Subjects to transfer their Allegiance to the Conqueror; which is reason enough to conclude, That the Laws of the Land do not oblige Subjects in such cases; and if we carefully consider the true nature and obligation of National Laws, we shall be easily satisfied, That they do not.

For it is certain, National Laws have their whole dependance on the National Authority; it is that only makes them Laws, and they can continue Laws no longer than that Authority lasts which gives Being and Obligation to them; and therefore National Laws must of necessity partake in all the Changes and Alterations of Government. Our Obedience is not due to Laws, but by virtue of the Authority that commands them; and when the Authority is at an end, the Obligation of Laws must cease, as far as they respected that Authority. Laws are made for a settled Government, and they oblige Subjects, while the Government is and can be administered by these Laws; but when the Authority and Government is changed, and they cease to be Laws in *Westminster-Hall*, they are no Laws in Conscience neither: For how can Laws oblige without Au-

Authority? Or what Authority can mere humane National Laws have against all the present Authority and Government of a Nation? As for example; The Legal Right to the Crown concerns a Regular and Legal Succession, but not the beginnings of a Regal Power. The Law of Inheritance continues the Regal Power in the family possessed of it, whose Inheritance originally it was not; for the first King of the Family could not be Heir to the Crown, by whatsoever other means he came by it; and therefore it can oblige Subjects only against their own voluntary Interruption of the Royal Line, but not against violent Revolutions; for this is to make a Law, that no Prince shall conquer the Legal King, and possess himself of his Throne, that is, to make a Law, that the Sea should never break its banks; and in case of such a Revolution, to make a Law, That no Subjects should own or submit to the prevailing Prince, is like making a Law, That no Cottages or Villages should be drown'd; or carried away, when such a Deluge happens. Laws were never made for such cases as these, and therefore in such cases cannot be said so properly to lose their Obligation, as not to be Laws: We may as reasonably say, That the Subjects of *England* are bound to observe the Laws of *England* when they are in *France*, as that they are bound in conscience to observe the Old *English* Laws, if the *French* King should by Force ascend the *English* Throne. No Laws can be made against violent Revolutions, because such Revolutions over power Laws; and it is as absurd to suppose that any Laws should oblige the Conscience to oppose the Ruling and Governing Power, when settled by a Legal Investiture:

Which is to suppose, That Laws which are only Rules of Government, and owe their Being to a National Authority, should oppose all the Authority of the Nation.

Thus I observe farther, That mere human Laws cannot oblige the Conscience against Force; for when Authority cannot protect, it cannot command. Civil Societies are instituted for mutual defence; but when I am out of the Protection of Civil Authority, my Natural Liberty of Self-defence returns. If a man fall among Thieves, he may make the best terms with them for his life, that he can, and no Laws can deny him this liberty; for Self-preservation is a Natural Right, and Nature is superior to human Laws, and of greater Force; it does not hence follow, that the mere Oppression of Government restores this Natural Liberty, because we have granted away this Right of Self-defence, by entering into Societies; and God has taken it away, by forbidding us to resist Authority; and it is a very different thing to defend our selves when Authority cannot defend us, and to defend our selves against Authority; the first we have not granted away; the second is against the Fundamental Reasons of humane Government; and the Nature of Societies supposeth, that while the Constitution of the Government is secured, we must sacrifice our private Rights and Interests to Publick Peace and Order; but it was never the intention of Human Government to deny men the Right of Self-defence, when Authority could not protect them: This is the case of Slaves and Captives, of besieged Cities and Garisons, who have a Natural Right to submit to the Conqueror; when their own Prince cannot relieve them: And this wholly

wholly waves the Dispute about Authority; for whatever Authority may be supposed to remain in the Prince, his Authority is at an end, as to those persons whom he cannot protect; as Civil Societies themselves must dissolve, and all their Authority end, when they cannot defend themselves; and when any Subjects are delivered from the Authority of the Prince who cannot protect them in paying their Allegiance to him, they are at liberty to make the best Composition they can with that Prince in whose power they are, and to become his Subjects; and when they have bound themselves to him by Oath, their former Allegiance is utterly extinct; when we are at liberty from one Prince, we may make our selves Subjects to another, and when we have done so, we can owe Allegiance to none but him.

To confirm all this I observe farther, That the Laws of particular Countries are subordinate to the Laws of Nations, and must give place to them. By the Laws of Nations, I mean such Laws as from the reason and nature of things, and by common practice and implicit consent, are made the rules and measures of Justice between Sovereign Princes and Independent States. Now, as I have already shown, by the Laws of Nations, Princes by a Just Conquest may acquire a Just Title to the Conquered Prince's Throne; and if Princes may acquire such a new Right and Title, it is certain Subjects by the Law of Nations may own such a New-acquired Right. For the universal reason of Mankind must over-rule private and National Constitutions; for every man is a Member of the Universe, and a Citizen of the world, as well as a Subject of a parricular Kingdom; and the more universal Obligation always take place of
par-

particular Obligations; for they are prior Obligations, and supposed in that which is particular, which therefore cannot derogate from them: And it would be very strange, if a Prince by the Law of Nations may acquire a new Right, and yet it should be unlawful for Subjects to own his Right.

Nay, The universal consent and practice of all Nations, both of Princes and People, have made this the standing Law of all Revolutions, to submit to the prevailing Power, even when there is no pretence of Right, but only Force. No people ever scrupled this (till of late) upon Principles of Conscience, though the Laws and Liberties of a Nation have made some struggle to the last, to shake off the yoke of an Usurper.

The Primitive Christians complied with all the Revolutions of the Empire, and never disputed the Rights and Titles of their New Emperors; and those who can find out Legal Rights for all their Emperors, are well qualified, if they so please, to be Advocates-general for all the Usurpers that ever were in the World: But the Christians of those days never concerned themselves either with making or unmaking Emperors, but took them as they found them, and believed them all to be set up by God, as is evident from *Tertullian's* Apology. The Christian Bishops of those days submitted even to *Maximus* himself; and though *Sulpicius Severus* tells us, they were censured for their forward and flattering Courtship to that Tyrant; yet no man blamed them for their bare Submission and Obedience to him as Emperor, which *St. Martyn* himself did, though he treated him at first with a Monkish Liberty and Rudeness. The irruptions of *Goths* and *Vandals* furnish us with as
many

many Examples of this, as they obtained Conquests; for there were no Christians found so hardy in those days, as to dispute their Titles, and reserve their Allegiance for their Emperor: And to this day it is as constantly practised without any scruple, as there are Cities and Garisons besieged, surrendred, or taken, and that before any Composition made by the Prince, whose Subjects they were, as a late *Author* insinuates, contrary to the known and visible daily practice of all people.

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This is what all Princes expect from the Subjects of other Princes when they fall into their power by the successes of War, and therefore what in reason they must allow their own; and such a general consent of Princes and People makes a standing Law for Revolutions: And no man's Loyalty or Fidelity to Princes ought to suffer, even in opinion, upon this account.

Nay farther, The Laws of our Country, which are the rules and measures of our Civil Government, can never oblige Subjects to the overthrow of all Government. Yet should these *Jacobite* Principles take place, that we must upon no pretence own any King but the Rightful Lineal Heir while he is living; many cases may so happen wherein Subjects must be bound in Conscience to own no Government; thus it must necessarily be, whenever the Rightful King can't Govern, and yet no body else must: When he is Conquer'd and driven out of his Kingdoms, and Subjects must not own the Conqueror, though they can have no other Prince to Govern them. I would only desire these men to tell me, Whether any Laws can oblige men to live under no Government? To dissolve Civil Societies
into

into a state of Anarchy? If there were such a Law made, it would be a void, nay an impious Law, as being against the Laws of Nature, and the Laws of God, who has Created man a Sociable Creature, and instituted Civil Societies for the Government of Mankind; and is it not as unreasonable then to expound any Laws to such a sense as shall oblige Subjects to dissolve the Government of the Nation, as far as in them lies, and not to own any Authority but Force? Whenever they can prove that there ought to be no Government in a Nation, while the Rightful Prince cannot Govern, I will grant, that Subjects ought to own no other Authority; but if no Laws, no Legal Rights, can be more sacred than the very being of human Societies and Civil Government; the Rights of Princes must give place to the necessities of Government, for it is more absolutely necessary, that human Societies should be maintained and governed, than that any Prince, how uncontested soever his Right be, should Govern; for I think Legal Rights, which owe their very beings to human Societies, were never intended to put an end to them.

This I hope is enough to clear this Point, That a King may lose his Legal Right to the Crown by Conquest, which gives the Conqueror in a Just War a new Right, and sets Subjects at Liberty to transfer their Allegiance to the Conqueror: And I shall observe by the way, that though we are not a Conquered People, yet most of those reasons, which will justify Subjects in transferring their Allegiance to a Conqueror, will much more justify our Submission and Allegiance to Their present Majesties, whatever opinion we have about Right.

For it is certain, the Authority of the Nation is now in their Hands, and placed there by a legal Judgment; and if National Laws, which are the Laws of the Government, cannot oblige the Conscience without a National Authority, to give an Obligation to them, much less against a National Authority, then there can be no Law in *England* which at this time obliges the Consciences of *English* Subjects to pay their Allegiance to the late King *James*: There is no such Law to be found in *Westminster-Hall*, or Parliamentary Judgments, or Determinations, and then I know not where to find it. There is no King in *Westminster-Hall*, or on the Parliament Rolls but King *William* and Queen *Mary*; no Treason but what is committed against them, and therefore no Allegiance due by Law, but only to them: For Treason is a violation of our Allegiance, and where no Treason can be committed, no Allegiance can be due.

Tho' the Nation is not Conquered, yet it is certain, that private Subjects are under as great Restraint by the legal Change of the Government, as if they were in the Power of a Conqueror; for to resist would be equally fatal to them in both Cases, and there is no Authority that can defend them: And if Human Laws cannot oblige the Conscience against Force; if every Man has a natural Right to preserve himself by yielding and submitting to Power, when there is no Authority to defend him against it; why may he not as well submit to the irresistible Power of a National Authority (how unjust soever he thinks it is) as to the Military Power of the Sword? Why may not Men as well submit when they are conquered in the high-

est Judicature as in the Field? It seems to me, that there is little difference between them, when Men must forfeit their Lives, Estates, or Honours either way: And when the Authority of the late King (whatever they suppose it to be) can no more defend them from the Laws than from the Sword, what shall hinder his Authority's being at an end to them, and their being at liberty to take care of themselves?

The Subjects of *England* have a legal Right to their Lives, and Liberties, and Properties as, well as the King; and I know no Law that commands Subjects to forfeit their Lives, and Liberties, and Properties, meerly because they cannot defend the King in his, nor the King them in theirs. In Cases of such Extremity Kings will take care of themselves, and Subjects have as much Right to take care of themselves. If any Necessity will justify Kings in leaving their Thrones, and the Government, and the Defence of their Subjects, the same Necessity will justify Subjects in submitting to a new Power. No meer human Laws, nor human Authority can oblige in Cases of extream Necessity: The Authority of God indeed can, because God can reward and punish beyond the Grave. But though the Laws of Men are bound on us by the Authority of God, yet God requires us to obey Men and their Laws no farther than their Authority reaches; and therefore not in Cases of extreme Necessity, which in most Instances will dispence with the positive part of Moral Laws themselves.

Secondly, Let us now consider the Case of *Abdication* and *Desertion*, which was plainly the Case of the late King

King James: For he seeing himself deserted by his Subjects, and by part of his Army, who would not fight for him against their Religion and Liberties, durst not venture the Fortune of a Battel; and being, as appears by his Actions, resolv'd not to submit the Redress of all Grievances to a Free Parliament, had no other way left but to withdraw his Person, and sling up the Government.

The Question then is, Whether this was such a Leaving of his Crown, as put it into the Hands of the Estates to dispose of it to the next Heir. We must not expect to find any Precedent of this Nature, nor any Provision made for it in Law; for there never was an Example of this kind before, and probably never will be again: But all such unusual Cases must be determined by living Judges, according to the reason and nature of Things: We know how it has been determined, and what Disputes those Words *Abdication* and *Desertion* have caused; but I shall not dispute about Words, but consider the Thing.

I need not be at any pains to prove, that Government is absolutely necessary, and that all people have as natural a Right to supply the Vacancies of Government according to the Laws and Constitutions of the Kingdom, as they had at first to form themselves into human Societies: That Kings are made for Government, and therefore have no longer any Right to Kingship than they will administer the Government: And I think it is as plain, that for a King deliberately to quit his Kingdoms, without making any manner of Provision, or leaving any Authority behind him to govern in

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his Name, is actually to quit the Government. For to leave off governing, (as he does who withdraws his Person and Authority) is to quit the Government: And when the King leaves his Crown and Government, it must either of Right belong to the next Heir, or the Body of the Nation, and the Estates of the Kingdom will be restored to their Liberty of providing for themselves; for the Nation must be governed.

It is evident indeed, that Princes many times leave their Thrones without any intention to give up their Right to Government: But the Question is not what they intend, but what they do: If to leave their Thrones empty, which must be filled by some-body, be in the nature of the thing, or by necessary and unavoidable Consequence, to give up the Possession of them to some-body else, it is in vain to talk of parting with the Possession, without parting with the Right, as far as he parts with the Possession. For though a Right to the Crown be a different thing from the Possession of the Crown, yet the legal Possession of the Throne, and the legal Right to Government, are either the same thing, or so inseparably annexed, that to part with one is to part with both. The Right of Government (which is nothing but a Right to exercise all Acts of Government) is given by the legal Possession and Investiture, and therefore he who parts with his legal Possession and Administration of Government, parts with his Right to Govern. To forfeit the Obedience of Subjects, I think, is the same thing, as to forfeit the Right to Government; and that he most certainly does, who leaves the Government: For Subjects cannot be bound to obey him who will not Govern,
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who leaves them to take care of the Government themselves, or gives up the Government to those who will take it. No Prince has a Right to oblige Subjects to live without any Government, when he thinks fit to leave them; and therefore by leaving the Government, he absolves them from his Government, and gives them a Right to take care of themselves; and if he gives them a Right to dispose of the Government, he must give away his own Right to Govern.

Thus it is in the nature of the Thing, whatever the Occasion be that moves Princes to leave their Thrones, and how unwillingly soever they do it: For when a Prince leaves his Throne, he either leaves his Subjects in Possession of some new Powers, or makes it necessary for them to submit to some new Government; and the same Necessity which justifies a Prince in leaving his Throne and Government, must Absolve his Subjects from their Allegiance: But then the different Reasons for which Princes leave their Thrones, make a great difference in the Obligations of Subjects, as far as it is in their Power to receive or not to receive such a Prince again; the understanding of which will be of great use in our present Case.

When a Prince is driven out of his Kingdoms by a Foreign Power, if Subjects are able to do it, they are bound in Conscience to resist the Usurper, and to restore their Prince to his Throne again; if they cannot resist, they may and must submit: As their King unwillingly left his Subjects to save his own Life and Liberty; so Subjects may as unwillingly leave their
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King, and submit to the Conqueror, to save their own Lives, and Liberties, and Fortunes. For the Necessity is equal on both sides; the King does actually leave his Throne and Government, though he be forced by a hard Necessity to do so, and when the Throne is left empty, Subjects are free; but such a Vacancy being only the effect of Force, Subjects ought to take no Advantage of it against their King, when it is in their power to restore him; but when they are under the same Necessity to fill the Throne, that he was to leave it, his leaving it vacant will justify their filling it again, and submitting to a new Prince.

If a King be driven out of his Kingdom by his own rebellious Subjects, this will never justify them in keeping him out. For, though the King be gone, he did not leave them, but they drove him away; and if the Throne be vacant, they themselves made it so, and therefore are bound to fill it again with the Prince whom they have put out: And yet how far Loyal Subjects in this case may submit to Force and Necessity, and consult the Peace and good Government of their Country is a great dispute, which I have no occasion to interpose in at present; all that I have to say, as to this matter, is, That though in this Case the Throne be *de facto* Vacant, yet it is not such a Vacancy, as will justify Subjects in filling it with a new Prince: But if the Throne be filled, or a new Government set up, how far Subjects may submit to it, is another Question.

If a King without any force from his Subjects, privately without their knowledge, withdraws his Person
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and Authority, it is certain he leaves his Throne empty, but whether his Subjects may fill it with the next Heir, or must invite him back to fill it again himself, belongs to a publick Judgment, upon a wise and equitable Consideration of all Circumstances; and such a publick Judgment ought to determine all private Subjects.

The Throne is empty, when the King has left it, and an empty Throne must be filled, because the Nation must be governed: But yet there seems to be some difference in the nature of the thing, between such a Vacancy as this, by the King's withdrawing his Person and Authority, and a Vacancy by Death, which gives the next Heir an immediate Right to ascend the Throne: The Right of Inheritance and Succession does not immediately take place, but upon the natural Death of the King: Whether the Throne be so Vacant, while the former King is living, as to give Right to the next Heir to succeed, is matter of Judgment, and must be determined by the judicial Sentence of those to whom the Cognizance of such Matters belong.

Now though the Judgment of the Estates ought to be conclusive to private Subjects, yet if it be lawful after such a Judgment to enquire into such Matters, it seems to me, that King *James* had given them sufficient Reason to justify them to all the World in declaring his Throne vacant.

I have already observed (for there is no need of proving, what is self-evident) that when a King has left

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left his Throne, it is empty, and that the Necessities of Government require, that an empty Throne should be filled again; and then it must be in the Power of Subjects (whom the King has left without any Government, to shift for themselves) to fill it. Now if the Reason of the King's leaving be such, as makes it just for them, if it be in their Power to call him back, they ought to do it; but if he left them for such Reasons, as would make very good and Loyal Subjects glad to be rid of him, they may with a good Conscience take the Advantage of his leaving them to fill the Throne with a more desirable Prince. For no Prince has Liberty voluntarily to forsake his Government without giving up his Right to it, for human Societies must be governed; and therefore he actually devests himself of the Government, who by leaving it, makes it his own choice not to govern: And when he has done so, 'tis very hard to conceive; whence he should have Authority to resume the Government again at his Pleasure, without the concurrence of the People whom he would govern: So that to me it seems plain, That a Prince who once quits his Government, must expect a Restauration from the good Nature of his former Subjects, not of Right: His Appeal must be to Conscience and Equity, not a Demand of their Duty by the strict Rules of Justice.

Let us therefore consider the Case of the late K. J. with relation to Pleas of this kind. All that ever I could hear said against his *Abdication and Desertion* is, that he was driven out of his Kingdom by just and reasonable fears; and therefore left his Throne very
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unwillingly, and did not intend to develt himself of Royal Authority, but only to reserve himself for better times, till he could return to his Throne by force and power. All this I verily believe is true, that he went away unwillingly, and hoped to return again with power; and had no mind, no intention to part with his Kingdom for ever; but what would they prove by all this? would they prove that the late King did not leave his Throne? or that when he had left it, the Throne was not empty? which is to prove that he did not leave his Throne, or that though he left it, it was not empty, because he left it, and left it empty in a fright. Or would they prove, that his going away in a fright was not a voluntary Resignation of his Throne? I care not much if I grant this too, if they will but grant that it was a leaving it; for to leave a Throne, gives Subjects a Right to fill it, as well as a voluntary Resignation does, because the Throne must be full or Government ceases; and a King that leaves his Throne, though he knows it must be filled, if he leaves it, does that by leaving his Throne, which he who resigns it, does by a formal Instrument of Resignation; that is, he signifies to his Subjects that he won't govern them, but they must shift for themselves; for it is not at the will of a Prince, whether a Kingdom shall be governed or not; and when the King has left them, it seems more Regular and Legal to place the next Heir on the Throne, than to set up any other Person or Government.

The Reasons then, why Subjects should not have filled the Throne, when the late King had left it empty, ought to be resolved into the Reasons of his go-

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ing away. What they were, is sufficiently known ; and I believe no *English* Protestant, who loves the Religion and Liberties of his Country, will say, that they are such Reasons, as would excuse or justify his leaving them, or make it the Duty of Subjects to recall him.

The only visible Reason of his leaving us, was this, That if he staid, he must be under a necessity to call a Parliament, and he was resolved, Not to venture his Cause with them ; Not to suffer them to censure and redress the Miscarriages of his Government ; Not to part with his Dispensing Power ; Not to give such Security, as a Parliament would have demanded, for the Preservation of their Laws, Liberties and Religion : That is, he was resolved to be no King, or to be Absolute and Arbitrary ; and let any Man judge, whether this were not a good Reason for Subjects to take the Advantage which he had given them, and to fill the Throne, which he had made empty. To renounce a Legal Government, is to renounce the Crown of *England* ; and he who leaves the Throne, to avoid the Necessity of Governing by Law, may get it again when he can ; but Subjects are not bound to give it him : They know for what Reason he parted with it, and to restore it to him, would be a plain consent that he should have it upon his own Terms.

I know it is pretended, That he had reason to fear that his Person was not safe in *England* ; and that was the true Reason, why he withdrew into *France*. But this was so unreasonable a Fear, had he resolved

to have complied with the Parliament, that it seems rather to be a plausible Pretence than the true Cause of his withdrawing.

The Prince indeed was landed with a considerable Force, and the King was deserted by some of his Subjects, who declared for the Prince, and by part of his Army, that went over to him; which I grant was Reason enough for him to suspect, that it was not safe for him to dispute this Matter by the Sword, and defeat his Hopes of attaining his irregular Desires by a Victory; but it was no Reason to think, that his Person was not safe, would he have called a Parliament, and referred the Redress of all Grievances to them; those who would not fight for him against the Prince, and against their Religion and Liberties, would have secured his Person from all violent Attempts. He had Reason to believe this, since the Prince desired no more, and the Associators declared for no more (and all their Words and Actions spoke it) than that they would adhere to the Prince till

our Religion, Laws, and Liberties, are so far secured to us in a free Parliament, that we shall no more be in danger of falling under Popery and Slavery. History of Desertion, page 75.

The denial of this was the Reason why the Prince of Denmark, Duke of Grafton, Lord Churchill, and others of the Nobility left him, as appears from the Letters of the Prince, and my Lord Churchill: And when his Voyage for France was stopped, and he returned to London, the general Acclamations wherewith he was received; as he passed through London Streets, might have satisfied him how little danger his Person was in; and it is said, that he observed it himself, That

though they hated his Religion, they loved his Person.

If then the late King had no reasonable Cause to fear the safety of his Person, would he have staid to redress all Grievances by a free Parliament? if Subjects had no sufficient Reason to think, that he withdrew his Person and Authority for any other Cause but to avoid the necessity of giving Satisfaction to his People in Parliament; if there be no Evidence, that he would have staid to redress all Grievances, had he been assured of the safety of his Person, it seems to me, that the Estates had great Reason and Necessity to do as they did; to declare the empty and forsaken Throne vacant, and to fill it with the next Heir. It is certain this is such a Case as belongs to the Supreme Judgment of the Estates; for when a Throne is empty, by what means soever it become so, it belongs to them to consider whether and how it is to be filled: And in such Cases it is the publick Judgment, and not some Mens private Reason, which is our Rule.

But let us suppose his Fears had been never so just and reasonable, we must consider, who brought him into this state of Fear and Danger; for if the Guilt of this were wholly his own, his Fears are no better excuse, than those violent and illegal Proceedings which first frightened the whole Nation, and then brought these Fears upon himself. What he had already done, justified both the Prince of *Orange* and the Subjects of *England* in what they did; and if no Body were in Fault but himself; if his own Misgovernment

vernment made him Fear, and his Fear made him quit his Throne, his Abdication is as perfectly his own Act as his Misgovernment was; and then Subjects might very innocently take the Advantage, which without their Fault he had put into their Hands, to deliver themselves from Fear and Slavery.

The Prince of *Orange*, now our Gracious Sovereign, had very just Reasons for what he did. His Princess was the next Presumptive Heir to the Crown of *England*, and in Her Right he was immediately concerned in the Protection and Defence of these Protestant Kingdoms, at least so far as to secure the Succession.

The late King made great haste to subvert the Fundamental Constitution of the *English* Government, to change our Laws, and Liberties, and Religion; and both to effect and secure such Usurpations, took care, as fast as he could, to put the whole Civil and Military Power into the Hands of Papists. What an evil Aspect this had on Protestant Heirs and Successors (besides the present Oppression of the Subject) every one saw; especially when it was pretended that the Queen had brought forth a Prince of *Wales* to inherit the Crown, and to perfect that blessed Work of Slavery and Popery. If this will not justify the Prince of *Orange's* early Care for a Legal Redress of Abuses, which would infallibly have altered the Succession, and defeated his Right, if they had proceeded any farther, I think the Heir to the Crown is in an ill condition; for it may be with the latest to put in his Claim, when another is step'd into the Throne before

fore Him. It is no new thing for the Parliament of England to settle the Succession to the Crown, while the King is living; and to make all legal Provisions to secure the Succession; and if this may be done during the Life of the King, the Prince had great Reason to make his Appeal to a Free Parliament, and to take Arms to obtain such a Free Parliament, which the humble Addresses and Supplications of Subjects could not obtain; and this was all the Prince did to put him into this Fright; and if he had not done it, he had in some degree deserted his Right, as King James has now deserted his Throne.

As for the Subjects of England, the great Body of the Nation stood still, and neither assisted nor opposed King James; though generally they wished well to the Prince: And what was the Fault of this? The most Passive Men have always declared, That they are not bound actually to serve and defend the King in his illegal Oppressions, or in his Usurpations upon the Laws, and Liberties, and Religion of their Country; for no Man can be bound by Law to fight for the King against the Laws: For the Right of the King, which is only a Right by Law, can never be more Sacred than all the Laws; and it seems very hard to fight for one Law against all other Laws; to fight for a King to make our selves and all his other Subjects Slaves.

The Prince of Orange came with an Army into England to demand a Free Parliament, to redress the Miscarriages of Government, to secure the Succession, our

our Liberties, and Religion, which were beyond denial in danger. What now should the Subjects of *England* do? Should they fight for King *James* against the Prince? What had that been but to fight against a Free Parliament, our Laws, and our Religion? Those Protestants, who are now the most zealous Assertors of the late King's Right, did at that time, for these Reasons, excuse themselves from the Obligation of fighting for him. And yet *English* Subjects cannot be charged with denying to assist their King against the Prince of *Orange*, for they were never required to do it: There were no new Commissions granted them; without which, some are of Opinion, according to strictness of Law, it had been Criminal in them to take Arms, though it had been to defend their King.

And it seems very hard, if such a difficult Juncture as that was, when there were two Armies in the Bowels of the Kingdom, will not justify those Gentlemen who took Arms and stood upon their own defence; and that they declared to stand by the Prince of *Orange*, till all Miscarriages should be redress'd by a Free Parliament, seems to me little more than what those Bishops themselves did; who now refuse the Oaths; for when they were required to do it, they would not sign an Abhorrence of the Prince's Undertaking; and at *Guild-hall* they signed the Lords Address to the Prince; wherein they promised him their Assistance to procure a Free Parliament.

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And if neither the Prince, nor the Subjects of *England* were to be blamed for what they did, it is easie to guess where the whole Blame must lie : And if he wilfully brought this Necessity upon himself of quitting his Kingdoms, and rather chose to leave his Throne than satisfy the just Demands of the Prince, and of his own Subjects, he left his Throne for such Reasons as made it just and necessary for his Subjects to fill it.

If these Principles be true, they furnish us with plain and easie Answers to all the Difficulties relating to our present Settlement ; which I shall briefly observe as the Sum of this whole Discourse.

I. As first, Whether the late King *James* be still of *Right* the King of *England*, or of *Right* ought to be so. The only Argument to prove King *James's* remaining Right is, That he was the Rightful Heir to the Crown, and was legally and rightfully possessed of it, and therefore is Rightful King still, or at least of Right ought to be King.

Now, from what I have already said, and I hope, proved, the Answer to this is plain : 1. That as to his Right of Succession, the Subjects of *England* own'd it, and actually gave him the Crown, with all the accustomed Rites and Ceremonies of Coronation ; and therefore there is no dispute about that : But the Question is, Whether a King who loses, or gives away, or deserts his Crown, and falls from the Regal Power, have a new Right of Succession when the Throne is again filled ; that is, Whether if he
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part with his Crown, he can be Heir and Successor to himself, and by the Right of Inheritance challenge his Abdicated Throne again.

2. That he was once a *Rightful King*, does not prove that he is King still : For legal Right to a Relation and the legal Relation may be separated : he may be no King, who had once a legal Right and a legal Possession of the Throne ; and he may be the legal King, or One whom the Law owns to be King, who had no immediate antecedent Right to the Throne. For though in Relations which are founded in Nature, the Right and the Relation cannot be separated ; yet in legal Relations they may. And if he who had, or has a legal Right to the Crown may be no King, Subjects can owe him no Allegiance, for Allegiance is due only to the King.

3. That he was once a Rightful King, does not prove that he has any Right to be King now : For a *legal Right* (as the Right to the Crown is) may be lost by Conquest, or parted with by *Resignation*, or by *Abdication* and *Desertion*, and that the late King has so deserted his Throne, as to make it not only lawful, but even necessary for his Subjects to fill it again, I have already proved.

So that it is not enough for those who insist on King *James's* Right, to say, That he was Rightful Heir to the Crown, and that he was once Rightful King, which is all that they pretend to : For though he was once a Rightful King, he may
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now neither be a King, nor have any Right to be King.

II. Another Question is, Whether King *William* and Queen *Mary* be the Rightful King and Queen of *England*?

Now had King *James* died before the pretended Birth of the Prince of *Wales*, this had been no Question, for then Queen *Mary* had been the undoubted Heir to the Crown, and in her Right, and by Consent of the Princess *Anne*, allowed and confirmed by the Authority of the Estates, King *William* had been the Rightful and Legal King. Now if King *James* parted with his Right and Crown together, by forsaking his Government, and leaving his Throne vacant, and the Estates had a Right, if they pleased, to fill it, there can be no more Pretence of Right upon the late King's Account than if he had been dead. And as for the pretended Prince of *Wales*, at best his Birth was so very doubtful, that there was no reason for the Estates to reject the next undoubted Heir for him; especially when the King refused to submit that Dispute to Parliament, as the then Prince of *Orange* had done. And had his Birth been never so unquestionable, he could not be had, without taking the late King again; which was Reason enough for the Estates not to concern themselves with that Dispute, but to place the next Heir upon the Throne that could be had. The King withdrew himself, and sent away him whom he called the Prince of *Wales* before him, that we should not have him to make him King, had we had never
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so much mind to it; and had all the Royal Family deserted in the like manner, or had they been conveyed away from us, I see no reason why the Estates might not as well have chosen a new King, as if all the Royal Family had been extinct. And if this be the true State of the Case, as certainly it is, there can be no Dispute, whether their Present Majesties be Rightful King and Queen.

III. A Third Question is, How far those who are not satisfied in their own private Judgments, whether the late King *James* have lost his Right, and their Present Majesties are Rightfully advanced to the Throne, may own and pay their Allegiance to their Present Majesties?

Now if we do but allow that this is matter of Dispute, all Disputes about legal Rights must be determined by a legal Authority; and private Subjects must acquiesce in such Determinations, unless we will dissolve Civil Societies for the sake of some disputed legal Rights. Since then the Estates of the Realm (who are the Highest Authority when there is no King on the Throne) have determined this Matter, private Subjects have nothing now to do with it. In Matters which concern Civil Government they must follow the publick Judgment, which is the Rule and Measure of Civil Obedience, in contradiction to their own private Opinions, where the Dispute is only about Civil and Legal, not about Natural and Moral Rights. Private Subjects must own him for their King who is invested with the Royal Authority by the Estates of the Realm, to

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whom alone it belongs to judge! Authoritatively about such matters.

IV. But the last and great difficulty of all still remains, *viz.* Supposing King *James* should land in *England* with a Military Force to demand the Crown, what the Subjects of *England* are bound in Conscience to do? Which Side they ought to take? Whether they must fight for the late King *James* against their Present Majesties, or for their Present Majesties against the late King *James*?

Now if King *James* has lost his Crown, and his Right to it, and King *William* and Queen *Mary* are Rightfully possessed of the Throne, (which I take to be the truth of the Case) this will admit of no Dispute; for it is certain we ought to fight for our Rightful King and Queen, against One who has been King, but is no King now, nor has any Right ever to be King again.

But there is no absolute necessity of insisting upon Right, it is sufficient to determine the Case, only to say, that the Laws of the Land require us to fight for our King against him, who is no King; and he is King whom the Laws of the Land own to be King; that is, He who is placed on the Throne, and invested with the Royal Authority, with all usual and accustomed Solemnities by the Estates of the Realm. A legal Investiture makes a legal King, and the Law requires our Allegiance to such a King, that is, all legal Obedience and Defence

fence ; and the Law is the measure of legal Rights. Whatever Right then any Prince may pretend to the Throne, if the Law does not allow private Subjects to take Cognizance of such Rights against a legal Possessor, if it does not extinguish, yet at least it limits, suspends, and sets aside such Rights in such Cases, that they are to Subjects as if they were not : And as the Law can make and create legal Rights, so it can limit and set Bounds to them, and determine in what Cases, and to what Effect and Purposes they shall be Rights, and they are legal Rights no farther.

But besides this, it is worth observing, That the Law does not allow Civil and Legal Rights to be disputed and determined by the Sword ; for that is a dissolution of Civil Authority and Civil Government ; and therefore no Subjects can be bound at any time by the Laws of the Land to fight for a supposed or pretended Right against a Legal Possessor. We are bound to fight for our King, to defend his Person, Crown, and Dignity, but it is for a King whom the Laws own to be King ; that is, who is invested with the Royal Authority by the Estates of the Realm, and is actually on the Throne. According to the Fundamental Constitution of all Civil Societies, the Disputes about the Legal Rights must be determined by the Judgment and Sentence of a Competent Authority, not by the Sword, which can decide no Question, but which side is strongest : An Appeal to the Sword against the Sentence of the last Authority, puts an end to the Authority of Laws, and consequently is no part of Legal Obedience and

and Defence; and then I cannot guess how any Subjects should be bound in Conscience to fight for the meer Right of a Prince, (whatever Opinion he may have of his Right) against a Legal Possessor of the Throne; nay, it seems to me, that Subjects are bound in Conscience not to do it, as much as they are bound not to fight against Civil Authority and Government. Nor is this to fight for Wrong, or to fight against Right, where ever we suppose the Right to be, for we neither fight for or against either; which the Laws and the very Nature of Civil Constitutions will not allow; but we fight for our King against all his Enemies at home or abroad, as the Laws of the Land require us to do.

And what Right soever any Prince has, when he comes to dispute it with the Sword, Subjects may and ought to defend the Possessor against him, and to leave the dispute of Right to the Judgment and Determination of a proper Tribunal: Thus the Prince of *Orange*, his present Majesty, did; though he came with the Sword in his Hand, it was not to try his Cause by the Sword, but to referr his Cause to a free Parliament, and to procure such a Parliament by the Sword, which nothing but the Sword could obtain.

In short, when a Prince challenges his Right by the Sword, it is seldom seen, that his own contents him; if he wins his Crown, he makes himself Master also of his Subjects Rights; and may carve out what kind of Power or Government he pleases with a Conquering Sword: And therefore whatever Ob-
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ligation Subjects should be supposed to lie under to the Rightful Heir, they are not bound to make him a Conqueror, which is to make themselves Slaves, if he pleases: They cannot fight for his Right without fighting against their own, and against the Rights and Liberties of their Country; which is proof enough, that no Civil Constitution can allow of fighting for the Crown. Such things have been, and such things will be; but the Question is, what Subjects are bound in Conscience in such Cases to do? And unless they are bound to enslave themselves and their Country, they can never be bound to suffer, much less to assist any Prince, whatever his Pretences be, to seize the Crown by Conquest.

This is a good Argument against any Prince, who will force his way to the Throne, which is already filled by the Estates of the Realm; but it is an unanswerable Argument in our present Case. We know the late King *James* too well to trust him with a Conquest, if we can help it; and we know the *French* King too well to receive his Troops among us, if we can keep them out; and those whose Consciences command them to assist the late King to Conquer their Country, need some other Cure than Arguments to convince them: But this has been so fully stated in the *two Letters to a Friend concerning the French Invasion*, that I shall refer my Readers for farther Satisfaction to those Letters.